

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 438/2018

Arti

Applicant

Versus

Central Ground Water Authority & Ors.

Respondent(s)

Date of hearing: 17.10.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None

Respondent: Mr. Ajay Kumar Sharma, Member Secretary with Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates. for UPPCB
Mr. A.K. Agrawal, Member Secretary, CGWA
Mr. I.K. Kapil, Advocate for UP Jal Nigam
Mr. Divjot Singh Bhatia, Advocates for R - 10
Mr. Anand Kumar V. and Mr. Aditya Kishor Tyagi, Advocates for R - 51, 53 & 67
Mr. Dalip Singh and Ms. Radha Singh Dhavni, Advocates for R - 84
Mr. Jitesh Singh, Adv. for R - 99
Mr. Gaurav Prakash Pathak, Advocates for R - 100
Ms. Preeti Gupta, Ms. Henna George, Mr. Arvind Kumar Gupta and Ms. Shivani Sharma, Advocates for R - 126

ORDER

The Issue

1. Issue for consideration is the compliance of judgement of the Hon'ble Supreme Court in MC Mehta v. UOI, (1997) 11 SCC 312 for regulation of indiscriminate boring and withdrawal of ground water for sustainable water resource management. Regulatory measures expected in terms of the

said judgement are water conservation, rainwater harvesting, recycling and reuse of water, afforestation, protection of water bodies, awareness and education. This includes mapping/survey, regulated extraction ensuring replenishment. While a specialised regulatory agency – CGWA has been created with powers of Central Government under section 5 of Environment Protection Act, 1986, other statutory regulators, including the District Magistrates and the Pollution Control Boards have to play their respective roles.

2. While in the application as originally filed grievance raised was against unauthorized withdrawal of ground water by 122 hotels in Ghaziabad - Respondents No. 5 to 126 herein, the Tribunal took up the larger issue of such problem in major cities of the UP. It has been found that there is large scale illegal extraction of groundwater in the entire State, including in areas which are scarce in availability of groundwater. It is well known that depletion of ground water results in alkalinity and salinity of soil remediation of which can be at huge cost to the environment. Precautionary principle requires, careful appraisal for permitting such withdrawal and prohibiting unregulated withdrawal. Groundwater has been held to be mineral vested in State and its withdrawal without permission held to be theft, the statutory authorities have to perform their duty of protecting the scarce natural resource under public trust doctrine and proceed against the violators as per law.

3. Case set out in the application is that the water level in all the four blocks of Ghaziabad District is depleting rapidly and at locations of hotels, marriage halls, party lawns, the water level is depleting faster. Several hotels are located in 'Notified over exploited area' of Ghaziabad. They are mostly dependent on ground water extraction. The worst condition of District Ghaziabad in this regard is clear from the Hydro geological report

of CGWA, 2011 and 2013. It is further stated that the Hotels are operating without any consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air Water (Prevention and Control of Pollution) Act, 1981. Reference has also been made to an earlier order of this Tribunal on the subject, dated 13.04.2017 in O.A. No.190/2016, Sushil Raghav & Anr. v. Central Ground Water Authority & Ors., as follows:-

“For the present, we would like to proceed to ensure compliance to our directions date 15-04-2015 and in this regard, direct as follows:

1. *CGWA shall forthwith seal all the borewells run by the existing and/ newly established industries and to be established from for extraction of ground water, which are not granted consent as on the date of the order passed by this Tribunal on 15-04-2015.*
2. *2. Extraction of water by such of the industries who have applied to CGWA for grant of permission and consent and whose applications are still pending, shall also be prevented from extraction of ground water from the borewells till their applications are objectively examined individually.*
3. *CGWA shall review the consents so far granted to the industries in the area in question and the private individuals/ or any person till 15-04- 2015 on merit of each case and take a final decision as to whether the consent so granted is valid in law or requires revocation. If that be so, all the licenses/ consents shall be revoked. Of course, after granting opportunity to the recipients of such.*
4. *Apart from the industries who are brought into the mischief of our order, we further direct extraction of ground water by, private individuals, any person or builders without permission or having valid permission, shall face the same consequences and CGWA shall seal all their borewells.*
5. *CGWA shall ensure that no private water supplier through tankers is allowed extraction of water whether within or beyond the limits of the Municipal Corporation with authorization of CGWA.*
6. *The CGWA shall list out such of the water suppliers who are supplying water for any purpose and ascertain the sources of acquiring of water by the suppliers. If the same is being done after obtaining consent then ascertain the quantity of water so far extracted.*
7. *The District Magistrate who is described as the authorized officer under the notification referred to above, shall ensure that any direction issued by CGWA in this regard, is enforced.*

8. *The CGWA is directed to pass appropriate orders and get it executed through the authorised officer named in the notification. If need be obtain, necessary assistance from the local jurisdiction police for this purpose. The CGWA and District Magistrate to issue appropriate directions /instructions to the jurisdiction police for this purpose.*
9. *The report about compliance of this report shall be filed with regards the condition nos. 1 2 and 3 within one week after sealing of borewells. The report shall be filed within a period of one week from today after serving copy on the applicants counsel.*
10. *As regard the other directions are concerned the CGWA is granted three weeks time to file the report of compliance in the Registry after serving copy on the applicant counsel.”*

4. It is further stated that according to the news article dated 07.07.2018 published in the Dainik Jagran newspaper, against the demand of 245 MLD water, the Ganga Water Plant is working on half the capacity. It cannot be installed in Khoda Colony because of ground water quality of the Colony being poor.

Procedural History

5. The matter has been dealt with by the Tribunal in the last four years by several orders. Apart from orders dated 31.7.2018, 24.9.2021, 25.2.2022 and 25.8.2022 in the present matter, orders dated 23.4.2015, 26.7.2018, 28.8.2018, 22.11.2018, 3.1.2019, 7.5.2019, 11.9.2019, 20.7.2020 and 25.2.2022 were passed in connected matter OA176/2015, apart from orders in other connected matters. It will suffice to refer to orders in the current matters and order dated 20.7.2020 in OA176/2015 for purposes of this order.

6. Vide order dated 31.07.2018, statement was made on behalf of the CGWA that except one no other hotel out of 122 parties to the application had permission for withdrawal of ground water. The Tribunal, accordingly, directed that on verification of factual aspects, remedial action be taken

and a compliance report filed by January, 2019. Vide order dated 24.09.2021, report of CGWA was considered and finding that the same was incomplete, the Tribunal directed CGWA to place complete information about the compliance status by all the parties, after interaction with the District Magistrate and State PCB. Vide order dated 25.02.2022, the matter was further considered in the light of report of the CGWA dated 03.12.2021 after visiting 121 units mentioned therein, to the effect that there were large scale violations. In view of the said report, the Tribunal found it necessary to issue notice to the concerned hotels before determining their liability. Further report was sought about the remedial action taken by the CGWA, State PCB and U.P Jal Nigam. It was further directed that apart from the named establishments, violations by similar other establishments in nine major cities of U.P - Lucknow, Kanpur, Agra, Meerut, Gautam Buddha Nagar, Bareilly, Varanasi, Jhansi, and Gorakhpur may be verified. By last order dated 25.08.2022, the Tribunal granted further opportunity for compliance and required the presence of the Member Secretary, UPPCB, Member Secretary, CGWA and Chairman, UP Jal Nigam.

Consideration today – in the light of factual reports CGWA, UP PCB, UP Jal Nigam, response of violating establishments and legal position

7. In pursuance of above, UP PCB and CGWA have filed their respective reports dated 24.09.2022, 26.09.2022, followed by further submissions dated 14.10.2022 and 15.10.2022. Some of the establishments have filed their respective versions including, Rurban Resort, Muradnagar, District Ghaziabad, Fortune Inn Grazia, Ghaziabad and Lemon Tree Hotel, Kaushambi, Ghaziabad.

8. We have heard the Member Secretaries, UPPCB and CGWA present in person by video conferencing and counsel appearing for UP Jal Nigam and some of the establishments.

Stand of the UPPCB

9. Stand of the UPPCB is that inspections have been carried out to verify legality of extraction of ground water by hotels, resorts, marriage halls and guest houses in nine Districts in which major cities of UP fall. District wise comprehensive report has been prepared by CGWA which has been sent to the concerned District Magistrates for remedial action against the establishments extracting ground water without valid NOC. It has been directed that the tube-wells/bore-wells may be sealed and environmental compensation calculated as per CGWA Guidelines dated 24.09.2020.

Stand of the CGWA

10. Stand of the CGWA is that public notice dated 23.10.2017 was issued that District Magistrates were authorized to inspect whether ground water was being extracted without NOC and to take remedial action for sealing such illegal wells and launching prosecution. Reminders were sent but no communication was received from the concerned District Magistrates. In terms of order of this Tribunal dated 25.02.2022, joint Committees were constituted on 15.03.2022 comprising of:-

- (i) Regional Director, CGWB, Northern Region/ or his Representative;
- (ii) Officer(s) from Uttar Pradesh Pollution Control Board not below the rank of or his representative;
- (iii) Concerned District Magistrate/ or his representative

11. The said Committee conducted inspections in all the nine cities. Remedial action has been initiated by DM, Bareilly and other DMs have been requested to take similar action.

12. Summary of inspected hotels/guest house/marriage halls, etc is as follows:-

“Table: Summary of inspected Hotels/ Guest House/ Marriage Halls etc.

Sl. No.	District/ City	Total No. of Hotel/ Banquet Hall/ etc. (targets)	No. of Hotels who have not obtained NOCs	No. of Hotel who have obtained NOCs	No. of Hotel could not be located	No. of Hotels do not exist	No. of Hotels who have not provided the data	No. of Hotels repeated in the list	No. of Hotels which do not require NOCs due to having supply through water supplying agencies.
1.	Agra	424	386	10	0	18	0	0	10
2.	Bareilly	117	44	27	27	0	0	4	15
3.	G.B. Nagar	34	20	0	2	0	0	0	12
4.	Gorakhpur	131	119	1	0	10	0	0	1
5.	Jhansi	86	75	0	3	2	3	0	3
6.	Kanpur	233	145	0	0	73	6	9	0
7.	Lucknow	333	148	7	58	97	15	0	8
8.	Meerut	132	106	0	0	3	3	0	20
9.	Varanasi	413	364	10	3	0	17	4	15
	Total	1903	1407	55	93	203	44	17	84

Analysis and finding by the Tribunal

13. From the above table compiled by the CGWA with the assistance of District Magistrates, it is patent that more than 70% of establishments have been found to be extracting ground water illegally. Verified compliance status is said to be only for 55 units out of 1903, which is less than 3%. Thus, situation is alarming as shown by rampant violations, defeating the directions of the Hon’ble Supreme Court in *M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312* requiring control and regulation of groundwater extractions. While a specialized body has been constituted in the form of CGWA, it is difficult to say that it is effective as expected.

Observations of the Hon'ble Supreme Court that management of water resources is to achieve overall aspirational goal of sustainable development on principles of inter and intra generational equity, the precautionary principle, conservation of natural resources and environmental protection appear to have been completely ignored.

14. The Authority directed to be constituted by the Hon'ble Supreme Court was for the following mandate:-

“7. ... The mandate of the authority needs to include the following:

- * To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use).*
- * To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned **based on the regional water supportive capacity.***
- * To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to **encourage judicious use of water resources.***
- * **To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels.***
- * **To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers.***
- * To ensure techno-economic feasibility and to implement programmes on **reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water**, use of treated sewage in social forestry and public parks in municipal areas and **reuse of treated wastewater in new housing complexes for non-consumptive usages.***
- * **To protect, conserve and augment traditional water retaining structures.***
- * **To protect, conserve and augment natural and manmade wetlands in the country.***

- * ***To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions.***
- * ***To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing.***
- * ***To design and implement programmes to **arrest alarming rates of decline in snowline in the country.*****
- * *To ensure catchment area treatment, including construction of check dams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins.*
- * *To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988.*
- * ***To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource.***
- * *To ensure **community participation** with a view to harnessing traditional knowledge at all stages in the holo-logical approach to water resource management.”*

15. With evidence of large-scale illegal extraction of ground water and data of depleting ground water levels, stringent measures are required for sustainable water management. **We have no other option but to hold that there is all round failure of the statutory authorities in complying with the mandate of judgement of the Hon’ble Supreme Court.**

16. This Tribunal has been dealing with the issue since 2012. In spite of monitoring for ten years, the rampant non-compliance is continuing. There is unwillingness or neglect by the Authorities in performing their statutory functions which has also been recorded in earlier orders referred to above. There is consequential adverse effect on flow of river and streams which is obviously leading to disruption of aquatic ecosystems and food security. Salinization of soil is another well-known adverse consequences.

17. It remains patent that CGWA is ill-equipped to handle the problem. Statutory framework is required to be revamped to give effect to the

directions of the Hon'ble Supreme Court. The appraisal process, essential component of regulatory powers, stands delegated to the District Magistrates or other authorities, without such authorities being equipped or mandated to conduct necessary appraisal. The result is that either groundwater extraction is taking place without any permission and with no adverse consequences or such approvals are being granted mechanically as a matter of course unconditionally or with conditions which are not monitored. Alternatives to ground water extraction in the form of re-use of treated water for secondary purposes are not being adequately considered. This is resulting in shortage of potable water for drinking purposes.

18. Vide order dated 20.07.2020 in Original Application No. 176/2015, *Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.*, the situation was reviewed exhaustively. The Tribunal expressed disappointment with the approach of the Authorities contrary to the mandate as per judgement of the Hon'ble Supreme Court. Some of the observations in the said order are:-

*“27. In terms of the Tribunal’s previous orders (dated 03.01.2019, Paras 29 and 31¹, and dated 11.09.2019, Para 24²), **the core issues that are required to be considered are:***

- a. **Has a robust institutional monitoring mechanism been evolved***
 - i. **To define ‘assessment unit’ - wise carrying capacity and accordingly set (a) target replenishment levels and (b) plan for permissible levels of extraction, of ground water levels in OCS areas;***
 - ii. **to assign individual target replenishment levels as a condition for granting extraction permits, and to audit such replenishment by those who are extracting groundwater; as well as to audit and measure actual carrying capacity periodically;***
 - iii. **to monitor real-time implementation of conditions for permitting extraction of ground water;***

¹ Quoted supra, Para 20

² Quoted supra Para 23

- iv. **to withdraw permits for extraction of ground water failing target replenishment levels; as well as**
 - v. **to sustain the flow of rivers in terms of e-flows and sustain other water bodies?**
- b. **Is there a provision for an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise)?**
- c. **Has an effective and measurable plan been prepared for preventing depletion and unauthorized extraction of ground water backed by requisite mechanism in the form of manning and effective functioning of CGWA so as to ensure sustainable ground water management in terms of the Hon'ble Supreme Court mandate by which CGWA was created?**
- d. **Is the compensation regime against violators adequately deterrent?**

28. *The answer is 'no'. If implemented, the current report would nullify the mandate of the Hon'ble Supreme Court by seeking to deregulate ground water extraction, ignoring its impact on the e-flow of rivers, water bodies and overall sustainable management of scarce natural resources with emphasis on industrial development, without balancing development and environment. Irreversible damage cannot be allowed by extracting water beyond safe levels, without impact assessment.*

29. *We, thus, hold that as per mandate of sustainable development under Section 20 of NGT Act, 2010, which has been held to be part of right to life under Article 21 of the Constitution, the regulatory authority must direct its policy towards preventing further depletion of and upgrading the groundwater levels based on impact assessment. Extraction can neither be unregulated or allowed across the board without individual consideration. For this purpose, there is need to compile data by **mapping all the assessment units individually in terms of current and estimated water level, drawal and replenishment and preparing a management plan for all such units**. The CGWA being a statutory regulator for the country has to exercise overriding power in the form of statutory regulatory orders. It may have its own network and, to the extent found viable, utilize the network of existing Authorities like District Magistrates, Environment Departments, Departments of Irrigation and Public Health etc. The ground water assessment has to be done annually and placed on the respective websites of the Districts or States. Any extraction of groundwater has to be permitted keeping in mind availability of groundwater ensuring that there is no further depletion and ground water level remains at safe level.*

30. *At this stage, we may notice that the regulatory mechanism of the CGWA has not been adequate, as the report also notes. CGWA does not appear to have requisite strength nor enforcement mechanism nor strategies. This may be one of the reasons for failure in effective monitoring, defeating the object of law. This has led to large number of petitions before this Tribunal pointing out that illegal*

groundwater extraction was rampant. The plans for **rain water harvesting and many other steps to a great extent remain largely only on paper**. Remedial measures need to be taken in view serious challenges in protection of groundwater level, to save rivers and water bodies and the entire chain of environment.”

Paras 31 to 35...xxx.....xxx.....xxx

Review of pertinent case law re. Sustainable Development

36. The principle of sustainable development is well established. We may refer to certain well-known decisions. In (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action and Ors. v. Union of India & Ors.*, the Hon'ble Supreme Court considered and explained the principle and laid down that compensation has to cover cost of remediation.³ The report in the present case is not compliant with this principle as observed above. The principle of sustainable development, as a balancing concept, has been further discussed and explained in (1996) 5 SCC 647, *Vellore Citizen's Welfare Forum v. Union of India & Ors.*⁴ The Public Trust Doctrine has been discussed and explained in (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath & Ors.*⁵ There **can be no exemption to industries against sustainable development principle** as held in (2001) 2 SCC 62, *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) & Ors.*⁶ In (2004) 10 SCC 201, *State of W.B. v. Kesoram Industries Ltd. & Ors.*, there are observations to the effect that **deep underground water belongs to the State and is governed by the Public Trust Doctrine** (Para 387). Use of water for irrigation purpose may be permissible but it cannot affect reuse of water by others. Reference was made to the judgement of the Kerala High Court in (2004) 1 KLT 731 restraining *Hindustan Coca Cola Beverage* from using groundwater for its plant. It was observed that the State was under duty to protect ground water against excessive exploitation (para 389). The issue involved therein was justifiability of levy of cess on minor minerals by the Central Govt which was upheld by majority. These observations are in the minority judgement but on this issue, there is no contra view in majority judgement. In (2006) 3 SCC 549, *Intellectual Forum, Trupathi v. State of A.P. & Ors.*, the said principles have been reiterated.⁷ We may refer to the need for impact assessment to give effect to sustainable development and precautionary principle. In recent judgement in (2019) 15 SCC 401, *Hanuman Laxman Aroskar v. Union of India*⁸, the environmental rule of law has been discussed as follows:

“35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen

³ ¶ 67, 68 & 70

⁴ ¶ 11 to 15

⁵ ¶ 25 & 34

⁶ ¶ 44

⁷ ¶ 68 to 82

⁸ ¶ 35, 42, 144, 149 & 150

to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

144. **The environmental rule of law** provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace [United Nations Environment Programme, First Environmental Rule of Law Report.... The environmental rule of law becomes a priority particularly when **we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector**. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, **supports sustainable economic and social development, protects public health**, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.... Similarly, the rule of law in environmental matters is **indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs)**, the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;
- (iv) Quality education;
- (v) Gender equality;
- (vi) **Clean water and sanitation;**
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and **regulation of water availability and**

water quality, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.”

37. In a recent judgement, Madras High Court⁹ considered the issue of regulation of the groundwater¹⁰. It was also observed that drawal of groundwater without authority will be criminal offence of theft and mischief under Section 379 and 425 IPC. Such extraction must be scientifically monitored District wise with punitive consequences against violations. Following order was passed:

- “(1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.
- (2) The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.
- (3) The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.
- (4) The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.
- (5) The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.
- (6) The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.
- (7) **The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.**
- (8) **The respondents are directed to suspend the licenses by issuing show cause notices and by**

⁹ Dated 03.10.2018, M/S. Sarooja Agro Foods v. The Chief Engineer

¹⁰ ¶ 69 to 82

providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.

- (9) **The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.**
- (10) *The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.*
- (11) *Each Monitoring Committee appointed by the District Collector concerned, shall consists minimum of five persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.*
- (12) **The Monitoring Committee shall consist of the following persons:**
- (i) **The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.**
 - (ii) **One qualified Public Works Department (PWD) Engineer from Water Resources Department.**
 - (iii) **The Assistant Director of Zoology and Mining of the State Government.**
 - (iv) **The Revenue Divisional Officer of the concerned locality.**
 - (v) **One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.**
- (13) *The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).*
- (14) *It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.*
- (15) *The 1st respondent / Secretary, Public Works Department is directed to issue consolidated instructions in this regard based on the order passed in the present*

writ petitions to all the District Collectors, enabling them to implement the Court orders promptly.”

19. Directions issued by the Tribunal in the said order are:-

“

39. *In the light of the above discussion, we direct as follows:*
- a. *MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon’ble Supreme Court mandate by which CGWA was created.*
 - b. *Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. **Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each “Assessment unit”.** Procedures for assessment of individual applications and institutional mechanism may be clearly laid down.*
 - c. *As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).*
 - d. *There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee.** Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents’ cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission.** Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and swift action taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.*
 - e. *As observed in para 0(a) and 29(a) above, **all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with***

Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.”

20. The Tribunal further considered the matter vide order dated 25.02.2022 as noted earlier. Earlier directions were reiterated and compensation levied in some matters but in the present matter, notice to the affected establishments was issued so that principles of natural justice are followed.

21. In the light of rampant violations as found above, further question is what further course of action is to be adopted. As already observed, extent of compliance is only to the extent of 3 % and established non-compliance is more than 70%. There is a grey area of about 25% for want of information being furnished or collected.

Conclusion and directions

22. Under the circumstances, case appears to be made out for directing sealing of all establishments operating without mandatory consents to operate as per Water Act, till compliance and registering criminal cases for theft of groundwater against owners of the establishments. We have already referred to, in para 18 above, the law on the point that ground water vests in the State and extraction is not permissible without consent of the State. Further, such extraction can only be on payment of laid down charges. There is also need to recover compensation for illegal drawal of groundwater equal to the cost of such water with deterrent element with reference to the turnover of such establishment and also equal to the cost of restoring the environment. We leave this course to be adopted as per law by concerned statutory authorities.

23. However, we find it necessary to direct deposit of interim compensation atleast at the floor level. We called upon learned Counsel to assist as about the quantum of interim compensation.

Quantum of interim compensation and basis thereof

24. Learned Counsel for UP Jal Nigam suggests that interim compensation may be as per guidelines dated 24.09.2020 (though found to be inadequate by the Tribunal in earlier judgement dated 25.2.2022 in OA2015). According to him, such interim compensation should be for atleast five years prior to filing of this application as per section 15 of the NGT Act but in any case from 1.10.2017 to 30.9.2022. It works out to Rs. 50 lakhs per establishment having more than 100 rooms, Rs. 25 lakhs per establishment having 50-100 rooms and Rs. 10 lakhs per establishment having upto 50 rooms. This is calculated at the rate of Rs. 80 per KL/cubic metre, taking consumption to be 350 KL per room per day, which comes to be Rs. 10,000 per room per year. For 100 rooms, it will be Rs. 10 lakhs per year and for five years Rs. 50 lakhs. Same basis applies to other calculations. No other basis is suggested by any learned Counsel. We find the suggestion to be acceptable.

25. After hearing learned Counsel for the appearing establishments, we direct interim compensation at above rate be deposited by all the establishments identified as extracting groundwater without permission as well those not having consents to operate under the Water Act. Any earlier deposit will be adjusted in the interim compensation, subject to verification by the District Magistrate. This will be without prejudice to further action by statutory regulators as per law. Deposit may be made within one month with the respective District Magistrates, failing which theft cases be registered against the concerned establishments and borewells sealed. The

compensation deposited will be kept in separate accounts by the District Magistrates for utilisation in accordance with the respective District Environment Plans within six months for improving water quantity and quality, restoring water bodies and taking other relevant measures in their respective Districts. This task may be given specifically to an officer of level of ADM, who may report to the District Environment Committee already constituted as per directions of this Tribunal dated 26.09.2019 in OA No. 360/2018, *Shree Nath Singh vs. Union of India & Ors.*

26. We also direct the joint Committee constituted by CGWA, mentioned in para 11 above, to assess final compensation as per above guidelines, after giving opportunity to the concerned establishments, within three months. Any party aggrieved by such orders can take their statutory or other remedies as per law. This order may be served by the Committee by email on all the identified violators individually within one week.

27. We further direct the Committee constituted by CGWA as mentioned above in para 11 may verify the compliance status in respect of establishments for whom such status has not been so far verified either on account of such establishments being closed or having not furnished the information. This may be done within one month. On such verification, above course of action may be followed for them.

28. Action may also be taken for the establishments having not taken requisite consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

29. We further direct that while granting consents, requirement of installing digital water metres connected to central servers may be laid down. Concerned establishment may be required to furnish an 'Appraisal report' with regard to the quantity of ground water available for extraction

in the area and replenishment measures proposed by the concerned establishment such as rain water harvesting, sewage treatment, use of treated sewage. Such Appraisal report may be duly verified by the State PCB by an appropriate mechanism. Such project proponents may also undertake measures to compensate environment, particularly augmenting water quantity and improve water quality by afforestation, education and other measures which may be mentioned in the consent conditions and NOCs for extraction of ground water. Further, in respect of establishments having water supply from the local bodies and also extracting ground water, there should be separate digital metres in respect of both sources.

30. We also direct the concerned statutory regulators to look into and regulate use of potable water for non-contact purposes for which non potable water can be used to augment availability of potable water for drinking. If consents/NOCs are not applied for within one month, the establishments may be closed by the State PCB. If filed, such applications may be examined within next one month. Consent mechanism may also cover conditions in terms of order of this Tribunal dated 23.07.2020 in O.A. No. 400/2017, *Westend Green Farms Society vs. Union of India & Ors.* applicable to such establishments.

31. The States other than Uttar Pradesh may also study above directions and take further action by issuing necessary SOP through their Water Resources Departments and State PCBs within one month from today.

32. Though opportunity of hearing was available to all the affected parties as they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the joint Committee, any party aggrieved by the above order, who claims that opportunity of being heard was not given by the Tribunal, is

free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation.

33. Report of status of compliance as on 30.04.2023 may be filed by the UP State PCB, after compiling the relevant data from the concerned District Magistrates by 15.05.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

List for further consideration on 03.07.2023.

A copy of this order be forwarded to Chief Secretaries of all the States/UTs by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

October 17, 2022
Original Application No. 438/2018
AB